

SUPREME COURT OF FLORIDA

ROBERT FLAMILY,

PETITIONER

DOCKET No.: SC-

vs.

CITY OF ORLANDO and CITY OF
ORLANDO RISK MANAGEMENT,

RESPONDENTS

PETITIONER'S BRIEF ON JURISDICTION

Geoffrey Bichler, Esquire
Fla. Bar No.: 850632
Todd J. Sanders, Esquire
Fla. Bar. No.: 860920
Bichler & Kelley, P.A.
807 West Morse Blvd.
Suite 201
Winter Park, Florida 32789
(407) 599-3777
Counsel for Appellant

TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities	2
Preliminary Statement	3
Statement of the Case	4
Summary of Argument	5
ARGUMENT	
<u>THIS HONORABLE COURT HAS JURISDICTION IN THIS CASE PURSUANT TO ART. V, §3(b)(3), FLA. CONST. (1980) BECAUSE THE DECISION BELOW EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS OF THIS COURT AS WELL AS THOSE OF THE SECOND, FOURTH, AND FIFTH DISTRICT COURTS OF APPEAL ON THE SAME QUESTION OF LAW.</u>	6
A. EXPRESS CONFLICT	7
B. DIRECT CONFLICT	8
C. SAME QUESTION OF LAW	10
Conclusion	12
Certificate of Service	12
Certificate of Typeface Compliance	13

TABLE OF AUTHORITIES

<u>CASES</u>	<u>Page(s)</u>
<i>Aguilera v. Inservices, Inc.</i> , 905 So. 2d 84 (Fla. 2005).....	10
<i>City of Jacksonville v. Florida First National Bank of Jacksonville</i> , 339 So. 2d 632 (Fla. 1976).....	8
<i>Covert v. Hall</i> , 467 So. 2d 372 (Fla. 2d DCA 1985).....	5, 8, 9
<i>FCCI Ins. Co. v. Horne</i> , 890 So. 2d 1141 (Fla. 5 th DCA 2004).....	5, 8, 10
<i>Flamily v. City of Orlando</i> , 2006 WL 406926 (Fla. App. 1 Dist.), 31 Fla. L. Weekly 614.....	4
<i>The Florida Star v. B.J.F.</i> , 530 So. 2d 286 (Fla. 1988).....	6
<i>Ford Motor Co. v. Kikis</i> , 401 So. 2d 1341 (Fla. 1981).....	7
<i>Inservices, Inc. v. Aguilera</i> , 837 S. 2d 464 (Fla. 3 rd DCA 2002).....	11 (fn. 4)
<i>Liberty Mutual Ins. Co. v. Steadman</i> , 895 So. 2d 434 (Fla. 2d DCA 2005).....	5, 8, 9
<i>Sibley v. Adjustco, Inc.</i> , 596 So. 2d 1048 (Fla. 1992).....	11 (fn. 4)
<i>Southeast Administrators, Inc. v. Moriarty</i> , 571 So. 2d 589 (Fla. 4 th DCA 1990).....	5, 8, 9
<i>Turner v. PCR, Inc.</i> , 754 So. 2d 683 (Fla. 2000).....	5, 8, 9

STATUTES AND RULES

Art. V, §3(b)(3), Fla. Const. (1980).....5, 6, 7,
.....8, 9, 10, 11

§440.20(11), Fla. Stat.....4, 7, 10

§440.11, Fla. Stat.....10, 11

§440.37, Fla. Stat.....11, 12

Rule 9.030(a)(2)(A)(iv), Fla. R. A. P.....5

PRELIMINARY STATEMENT

The Petitioner, ROBERT FLAMILY, shall be referred to herein as “Claimant” or “Claimant/Petitioner.” The Respondents, CITY OF ORLANDO and CITY OF ORLANDO RISK MANAGEMENT, shall be referred to herein as E/SA. The Judge of Compensation Claims shall be referred to by the letters “JCC”.

STATEMENT OF THE CASE

In his final order dated April 22, 2004, the JCC, *inter alia*¹, vacated a settlement agreement entered into by the parties herein in 1996, and relating to the Claimant's workers' compensation claim brought due to his heart condition pursuant to §112.18, Fla. Stat.. The Claimant alleged fraud on the court as well as misrepresentation and misinformation as his grounds for seeking vacation of the settlement agreement. The JCC conducted an evidentiary hearing, which included testimony from the JCC who approved the order, and found that, at the time the agreement was presented to the JCC for approval, there had been sufficient misrepresentations to, and/or misinformed, the JCC, to warrant vacating the settlement.

On February 23, 2006, in *Flamily v. City of Orlando*, 2006 WL 406926 (Fla. App. 1 Dist.), 31 Fla. L. Weekly D614 the First District Court of Appeal reversed the JCC's order vacating the 1996 settlement agreement, ruling that a 2001 amendment to §440.20(11)(c), Fla. Stat., was procedural, and thus retroactively applicable, and pursuant to which the JCC lacked the subject matter jurisdiction to

¹ The JCC's order included other findings/rulings that are not the subject of the matter before this Honorable Court.

vacate a settlement agreement entered into by parties to a workers' compensation claim where the claimant was represented by counsel.²

The Claimant timely filed motions for clarification, rehearing, and rehearing en banc, all of which were denied without comment on March 31, 2006. The Claimant then timely filed his Notice to Invoke Discretionary Jurisdiction pursuant to Rule 9.030(a)(2)(A)(iv) of the Florida Rules of Appellate Procedure on April 26, 2006.

SUMMARY OF ARGUMENT

This Honorable Court has both subject matter and discretionary jurisdiction over this matter pursuant to Art. V, §3(b)(3), Fla. Const. (1980), because the decision below expressly and directly conflicts with this Honorable Court's decision in *Turner v. PCR, Inc.*, 754 So. 2d 683 (Fla. 2000), as well as the decisions of the Second, Fourth, and Fifth District Courts of Appeal in *Covert v. Hall*, 467 So. 2d 372 (Fla. 2d DCA 1985); *Liberty Mutual Ins. Co. v. Steadman*, 895 So. 2d 434 (Fla. 2d DCA 2005); *Southeast Administrators, Inc. v. Moriarty*, 571 So. 2d 589 (Fla. 4th DCA 1990); and *FCCI Ins. Co. v. Horne*, 890 So. 2d 1141 (Fla. 5th DCA 2004) on the same question of law, to wit: the exclusivity of the subject matter jurisdiction of judges of compensation claims.

² As with the JCC's order, the First District Court of Appeal's opinion included other findings and rulings that are not the subject of the matter before this Honorable Court.

Specifically, in the decision below, the First District Court of Appeal ruled that JCCs lack the subject matter jurisdiction to vacate settlement agreements entered into by the parties to a workers' compensation claim, whereas, pursuant to the aforementioned cases, this Court, the Second, Fourth, and Fifth District Courts of Appeal, have all state that the Florida Workers' Compensation Act provides JCCs with the exclusive jurisdiction to hear and decide cases involving an employee's workers' compensation claim.

ARGUMENT

THIS HONORABLE COURT HAS JURISDICTION IN THIS CASE PURSUANT TO ART. V, §3(b)(3), FLA. CONST. (1980) BECAUSE THE DECISION BELOW EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS OF THIS COURT AS WELL AS THOSE OF THE SECOND, FOURTH, AND FIFTH DISTRICT COURTS OF APPEAL ON THE SAME QUESTION OF LAW.

As this Honorable Court is well aware, Art. V, §3(b)(3), Fla. Const. (1980) provides that the Florida Supreme Court “may review any decision of a district court of appeal . . . that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.” As this Honorable Court explained in *The Florida Star v. B.J.F.*, 530 So. 2d 286, 288 (Fla. 1988), this constitutional provision “creates and defines two separate concepts. The first is a general grant of discretionary subject-matter jurisdiction, and the second is a constitutional command as to how the discretion itself may be

exercised. In effect, the second is a limiting principle dictated to this Court by the people of Florida.” However, this Court also stated that the Florida Supreme Court, “[a]s the final authority on the meaning of the Florida Constitution . . . has the final and inherent power to determine what constitutes express and direct conflict.” *Id.* (citations omitted).

Below, the Claimant/Petitioner separately addresses the three requirements for invoking §3(b)(3) jurisdiction as they apply to this case.

A. EXPRESS CONFLICT

In *Ford Motor Co. v. Kikis*, 401 So. 2d 1341, 1342 (Fla. 1981), this Honorable Court was faced for the first time with the issue of clarifying “the ‘expressly’ requirement in this Court’s constitutional jurisdiction to resolve conflicting appellate decisions” pursuant to Art. V, §3(b)(3), Fla. Const. (1980). In so doing, this Court noted that the “the district court below did not identify a direct conflict of its decision with any other Florida appellate decisions.” *Id.* The opinion at issue did, however, discuss “the basis upon which it reversed the trial court’s entry of a directed verdict . . . This discussion of the legal principles which the court applied supplies a sufficient basis for a petition for conflict review. It is not necessary that a district court explicitly identify conflicting district court or supreme court decisions in its opinion in order to create an ‘express’ conflict under section 3(b)(3).” *Id.*

Likewise, in the case *sub judice*, although the First District did not identify any conflicting district court or Supreme Court decisions in its opinion, it did discuss the basis for its decision to reverse the JCC's order to vacate the subject settlement agreement, to wit: the district court ruled that the JCC lacked subject matter jurisdiction to do so because of the 2001 amendment to §440.20(11)(c), Fla. Stat., and that this amendment was procedural and thus retroactively applicable. It is the Claimant/Petitioner's assertion that this opinion that JCCs lack subject matter jurisdiction to vacate workers' compensation settlement agreements conflicts with both at least one of this Honorable Court's decisions, as well as decisions rendered by the Second, Fourth, and Fifth District Court's of Appeal, in which it was stated that judges of compensation claims have *exclusive* jurisdiction over all workers' compensation claims, including the rights and duties of, and remedies available to, the parties in such claims. *See, Turner v. PCR, Inc.*, 754 So. 2d 683 (Fla. 2000), as well as the decisions of the Second, Fourth, and Fifth District Courts of Appeal in *Covert v. Hall*, 467 So. 2d 372 (Fla. 2d DCA 1985); *Liberty Mutual Ins. Co. v. Steadman*, 895 So. 2d 434 (Fla. 2d DCA 2005); *Southeast Administrators, Inc. v. Moriarty*, 571 So. 2d 589 (Fla. 4th DCA 1990); and *FCCI Ins. Co. v. Horne*, 890 So. 2d 1141 (Fla. 5th DCA 2004). These opinions are discussed in the next section of this brief.

Thus, the Claimant/Petitioner respectfully asserts that the “expressly” requirement of Art. V, §3(b)(3), Fla. Const. is satisfied in this matter.

B. DIRECT CONFLICT

Art. V, §3(b)(3), Fla. Const., in addition to requiring an “express” conflict between the decision of one district court and that of either the Supreme Court or another district court, also requires that there be a “direct” conflict. In *City of Jacksonville v. Florida First National Bank of Jacksonville*, 339 So. 2d 632, 633 (Fla. 1976), this Honorable Court explained that it had previously “identified two basic forms of decisional conflict which properly trigger the exercise of our jurisdiction under” Art. V, §3(b)(3), Fla. Const.. Such a conflict “may exist either (1) where an announced rule of law conflicts with other appellate expressions of law, or (2) where a rule of law is applied to produce a different result in a case which involves ‘substantially the same controlling facts as a prior case.’” The Claimant/Petitioner respectfully asserts that the instant case involves an announced rule of law that conflicts with other appellate expressions of law.

In *Turner v. PCR, Inc.*, 754 So. 2d 683, 686 (Fla. 2000), this Court stated that “[f]or employees within the [Florida Workers’ Compensation] statute’s reach, workers’ compensation is the exclusive remedy” In *Liberty Mutual Ins. Co. v. Steadman*, 895 So. 2d 434, 435 (Fla. 2d DCA 2005), the Second District stated that [a] circuit court has no jurisdiction over an action against a compensation carrier

for injuries covered by the [Workers' Compensation] Act.” In *Covert v. Hall*, 467 So. 2d 372, 374 (Fla. 2d DCA 1985), the Second District also stated that “[t]he [Workers' Compensation] Act provides deputy commissioners [now referred to as judges of compensation claims] with *exclusive* jurisdiction to hear and decide cases involving employees' compensation claims” (emphasis added). In *Southeast Administrators, Inc. v. Moriarty*, 571 So. 2d 589, 590 (Fla. 4th DCA 1990), the Fourth District echoed the language of the Second District in *Steadman*, stating that a “circuit court is without jurisdiction over an action against a compensation carrier for injuries covered by the Workers' Compensation Act”, and also quoted the version of §440.11(4), Fla. Stat., in which it states that “the liability of a carrier to an employee . . . shall be as provided in this chapter, which shall be exclusive and in place of all other liability.” Lastly, in *FCCI Ins. Co. v. Horne*, 890 So. 2d 1141, 1143 (Fla. 5th DCA 2004), the Fifth District stated that “[w]orkers' Compensation generally is the exclusive remedy for the employee's injury . . . arising out of work performed in the course and scope of his or her employment.”³

Each of these cases explicitly recognizes the exclusivity of the subject matter jurisdiction of judges of compensation claims over workers' compensation matters. Part and parcel of many, if not most, workers' compensation claims are settlement agreements entered into by the parties. This is acknowledged in §440.20(11), Fla.

³ The Fifth District went on to discuss the narrow “intentional tort” exception to this exclusiveness.

Stat.. Thus, the First District’s opinion that JCCs lack subject matter jurisdiction to vacate settlement agreements entered into by the parties to a workers’ compensation claim is in direct conflict with the decisions discussed above.

Based on the foregoing, the Claimant/Petitioner respectfully asserts that the “directly” requirement of Art. V, §3(b)(3), Fla. Const. is satisfied in this matter.

C. SAME QUESTION OF LAW

In *Aguilera v. Inservices, Inc.*, 905 So. 2d 84 (Fla. 2005), over the lengthy and vigorous dissent of Justice Bell, this Honorable Court exercised its jurisdiction pursuant to Art. V, §3(b)(3), Fla. Const., even though, as Justice Bell noted, the two decisions which the majority found were conflicting⁴ concerned two different sections of the workers’ compensation statutes (§§440.11 and 440.37), one of which (§440.37) had been repealed before the later opinion. Apparently, this Honorable Court found that there was “conflict jurisdiction” because both cases dealt with the concepts of the exclusivity of the workers’ compensation system and the immunity from tort claims enjoyed by employer/carriers pursuant to this exclusivity.

Likewise, in the case *sub judice*, although none of the cases cited herein as conflicting opinions address §440.20(11), Fla. Stat., nor workers’ compensation settlement agreements, they all address, as does the case below, the

⁴ *Inservices, Inc. v. Aguilera*, 837 S. 2d 464 (Fla. 3rd DCA 2002), and *Sibley v. Adjustco, Inc.*, 596 So. 2d 1048 (Fla. 1992).

extent/exclusivity of the subject matter jurisdiction afforded to judges of compensation claims. Therefore, the Claimant/Petitioner respectfully asserts that the “same question” requirement of Art. V, §3(b)(3), Fla. Const. is satisfied in this matter.

CONCLUSION

Based on the foregoing, the Claimant/Petitioner respectfully asserts that this Honorable Court has subject matter jurisdiction in this matter, would be well within its discretion to assert its jurisdiction over it pursuant to Art. V, §3(b)(3), Fla. Const., and that doing so would not fall outside the restrictions on the exercise of this discretion as outlined in *The Florida Star v. B.J.F.*, 530 So. 2d 286, 288 (Fla. 1988). The Claimant/Petitioner also respectfully requests that this Honorable Court exercise its discretionary jurisdiction and address the substantive issue of whether the 2001 amendment to §440.20(11)(c), Fla. Stat. divests the subject matter jurisdiction of JCCs to vacate settlement agreements entered into by parties to workers’ compensation claims.

Respectfully submitted.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by regular U.S. Mail on this _____ day of May, 2006, to: Michael Broussard, Esquire and Barbara A. Eagan, Esquire, 445 West Colonial Drive, Orlando, Florida 32804.

Geoffrey Bichler, Esquire
Fla. Bar No.: 850632
Todd J. Sanders, Esquire
Fla. Bar. No.: 0860920
Bichler & Kelley, P.A.
807 West Morse Blvd.
Suite 201
Winter Park, Florida 32789
(407) 599-3777

I HEREBY CERTIFY that this brief was computer-generated using Times New Roman fourteen point font on Microsoft Word, and hereby complies with the font standards as required by Fla. R. App. P 9.210 for computer-generated briefs.

Todd J. Sanders, Esquire
Fla. Bar. No.: 0860920
807 West Morse Blvd.
Suite 201
Winter Park, Florida 32789